

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ROHIT PRAKASH,	)	CASE NO. 5:10-CV-00033-SL
	)	
Plaintiff,	)	JUDGE SARA LIOI
	)	
vs.	)	<b><u>JOINT MOTION OF DEFENDANTS</u></b>
	)	<b><u>TO DISMISS COUNTS 1-6 AND 8-11</u></b>
ALTADIS U.S.A. INC., <i>et al.</i> ,	)	<b><u>OF THE COMPLAINT FOR LACK</u></b>
	)	<b><u>OF SUBJECT MATTER</u></b>
Defendants.	)	<b><u>JURISDICTION AND FAILURE TO</u></b>
	)	<b><u>STATE A CLAIM, TO DISMISS</u></b>
	)	<b><u>COUNT 7 FOR LACK OF SUBJECT</u></b>
	)	<b><u>MATTER JURISDICTION.</u></b>
	)	

All of the Defendants respectfully move this Court, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), to dismiss Counts 1-6 and 8-11 of the Amended Complaint (“Complaint”) because Plaintiff, Rohit Prakash, has no standing to complain of or recover for alleged competitive injury to Somya, Inc., and because none of these Counts state a claim upon which relief can be granted.

Further, all of the Defendants move this Court, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), to dismiss those portions of Count 7 of the Complaint that relate to trademarks other than DUTCH TREATS, as shown on Exhibit A hereto, because Plaintiff has no standing to complain of the registration of those marks, and to dismiss all but Max Rohr, Inc. (“Max Rohr”) from Count 7.

Finally, Defendants move this Court, pursuant to Fed. R. Civ. P. 12(b)(1), to dismiss the balance of Count 7, namely, the portion that seeks cancellation of the registration of Max Rohr’s mark DUTCH TREATS, for lack of subject matter jurisdiction. Once Counts 1-6 and 8-11 of the Complaint are dismissed, and Count 7 is stripped of the claims that Plaintiff has no standing to

make, this Court has no subject matter jurisdiction of a bare claim for cancellation of a registered mark.

The complete dismissal of the Complaint should be with prejudice. Even if Somya, Inc. engaged counsel, amendment would be futile to cure the deficiencies of the Complaint as more fully described in the attached Memorandum in Support, and in the separate Motions and Memoranda filed by Defendants other than Altadis U.S.A., Inc.

Respectfully submitted,

DATED: April 7, 2010

/s/ Deborah A. Coleman

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2010, this Joint Motion of Defendants to *Dismiss Counts 1-6 and 8-11 of the Complaint for Lack of Subject Matter Jurisdiction and Failure to State a Claim, to Dismiss Portions of Count 7 Unrelated to “DUTCH TREATS” for Lack of Standing, and to Dismiss the Remainder of Count 7 for Lack of Subject Matter* was filed electronically and a copy sent to Rohit Prakash, *pro se*, via regular U.S. mail, 1510 South Hametown Road, Copley, Ohio 44321.

/s/ Deborah A. Coleman

*Attorney for Defendants, Altadis U.S.A. Inc., Altadis Holdings U.S.A. Inc., Cuban Cigar Brands, NV, Max Rohr, Inc., Imperial Tobacco Group PLC, 800-JR Cigar Inc., Lewis I. Rothman, Grimes & Battersby LLP, Charles W. Grimes, Ronald O. Perelman, MacAndrews & Forbes Holdings Inc., Gary R. Ellis, Theo W. Folz, James L. Colucci and George Gershel*